Filed 6/29/10 Richard M. v. Super. Ct. CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

RICHARD M., Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Real Party in Interest.	B223704 (Los Angeles County Super. Ct. No. CK73046)

ORIGINAL PROCEEDING; petition for extraordinary writ. Donna Levin, Referee. Petition denied.

Richard M., in pro. per., for Petitioner.

No appearance for Respondent.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, and Tracey F. Dodds, Deputy County Counsel, for Real Party in Interest.

In his petition for an extraordinary writ, Richard M. (Father) challenges a March 25, 2010 order setting a permanent planning hearing for July 22, 2010, as to his sons. We deny the petition because substantial evidence supports the juvenile court's findings that there was no substantial probability that his children, Richard M. III, Jessie M., Ryan M. Jr. and Jacob M., would be returned to Father in six months.

BACKGROUND

Richard M. III is eight years old, Jessie M. is seven years old, Ryan M. Jr. is five years old, and Jacob M. is three years old. They lived with Father because Mother was incarcerated and subsequently deported to Mexico. Father was a known gang member.

On or about May 17, 2008, an unrelated three year old child, C.G., was severely beaten while in the care of Father and the child's mother.[1]

On May 22, 2008, the Department of Children and Family Services (DCFS) filed a Welfare and Institutions Code[2] section 300 petition and alleged under subdivisions (a) and (b) that because of the beating of C.G., Father endangered the children's physical and emotional health and safety and places the children at risk of physical and emotional harm, damage, danger and physical abuse. Father fled with the children.

At the Detention hearing on May 22, 2008, DCFS reported that the children's whereabouts were unknown. The juvenile court issued protective custody warrants as to the children and an arrest warrant as to Father. The juvenile court ordered that the minors be detained.

On May 27, 2008, Father came to DCFS to surrender the children. The children were taken into custody and placed in foster care. On May 30, 2008, the juvenile court

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[1] Father was taken into custody on May 17, 2008. The D.A. rejected the case against Father for insufficient evidence.

[2] Unless otherwise indicated, all further statutory references are to the Welfare and Institutions Code.

recalled the protective custody warrants and the arrest warrant and ordered that Father could receive monitored visits with the children.

On June 30, 2008, DCFS filed a first amended section 300 petition, and the juvenile court dismissed the May 2, 2008 petition. In the petition, the DCFS alleged that Father had inappropriately disciplined his own children and he had a history of substance abuse.

On June 30, 2008 at the Adjudication/Jurisdiction hearing, Father appeared and was represented by retained counsel. The matter was continued.

As of July 16, 2008, Father had not provided DCFS with his address. Father was visiting the children.

At the Adjudication/Jurisdiction hearing on July 18, 2008, Father appeared and was represented by counsel. The matter was continued to August 15, 2008.

At the Adjudication/Jurisdiction hearing on August 15, 2008, Father appeared and was represented by counsel. The matter was continued to September 25, 2008.

The DCFS Addendum Report of September 11, 2008 reported that Father had been shot; he was caught in gang cross-fire.

At the Adjudication/Jurisdiction hearing on September 25, 2008, Father appeared and was represented by counsel. The juvenile court sustained the petition and declared the children dependents of the court. The juvenile court ordered a disposition case plan for Father consisting of random drug testing, parent education, individual counseling, anger management, and monitored visitation.

In December 2008, DCFS identified maternal family members in the State of Georgia that were interested in caring for the children as relative placement and offering them a permanent plan of adoption. Also, DCFS reported that Father has not had any contact with the children since the Adjudication/Jurisdiction hearing and has not contacted DCFS.

At a hearing on December 24, 2008, Father was not in attendance but was represented by counsel. The juvenile court ordered DCFS to initiate an ICPC with the maternal aunt in Georgia.

On March 25, 2009, DCFS reported that since the Adjudication/Jurisdiction hearing Father has stopped all telephone calls and visits to the children. There was no evidence that Father was drug testing.

On April 24, 2009, DCFS reported that Father had not made any effort in the past six months to contact the children, and there was no evidence that he completed the court ordered services.

As of May 11, 2009, DCFS reported that Father still had not contacted the children. DCFS filed a due diligence declaration as to Father. Father's counsel did not know Father's residence or current whereabouts.

At the six month review hearing[3] on June 11, 2009, Father was not in attendance but was represented by counsel. The juvenile court terminated Father's reunification services.

On September 24, 2009, DCFS reported that it had received ICPC approval for the children's placement with relatives in Georgia. Father had not provided DCFS any information as to his compliance with court ordered services for reunification.

At subsequent hearings, Father was not in attendance, but was represented by counsel.

In an Interim Report dated November 16, 2009, DCFS reported that the children were in Georgia. Also, as of December 2009, Father still had no contact with the children.

As of January 2010, Father had not been located.

At subsequent hearings, Father was not in attendance but was represented by counsel.

At the contested 366.21(e).22 hearing on March 25, 2010, Father was not in attendance but was represented by counsel. Counsel did not know Father's whereabouts. The juvenile court terminated Mother's reunification services, ordered no visits for Father, and set a section 366.26 hearing for July 22, 2010.

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3 It was actually nine months since the Adjudication/Jurisdiction hearing.

Father's notice of intent to file a writ petition was filed with the superior court; the notice of intent was signed by Father and dated April 8, 2010. Father filed the petition in propria persona on May 24, 2010. Father's petition alleged that his family reunification services were prematurely terminated and if those services were continued there is substantial probability that the children would have been returned to him, and that the order for a hearing under section 366.26 should be vacated. On May 24, 2010, the clerk of this court informed the parties that the matter will be decided on the merits. DCFS filed an answer to the petition for an extraordinary writ.

DISCUSSION

Noncompliance with California Rules of Court

Rule 8.452 of the California Rules of Court requires that a writ petition to review an order setting a section 366.26 hearing include certain specified information. In particular, "[t]he petition must be accompanied by a memorandum" that provides a summary of the significant facts and supports each point with argument and citation to authority and the record. (Cal. Rules of Court, rule 8.452(a)(3) & (b); see also rule 8.456(a)(3) & (b).) A petition that fails to comply with these rules is subject to dismissal. We "dismiss as inadequate any rule 39.1B [now rule 8.452] petition that does not (1) summarize the particular factual bases supporting the petition, (2) refer to specific portions of the record, (3) relate the facts to the grounds alleged as error, (4) note disputed aspects of the record, and (5) have attached to it a particularized memorandum of points and authorities. [Citation.]" (*Cheryl S. v. Superior Court* (1996) 51 Cal.App.4th 1000, 1005, italics omitted; see also *Cresse S. v. Superior Court* (1996) 50 CalApp.4th 947, 955-956.)

Father failed to comply with these rules. His petition does not include a memorandum of points and authorities, and he offers only the allegation that his reunification services were prematurely terminated as "support" for his petition. There are no grounds for the petition. There is no factual basis for the petition.

Although we could dismiss the petition for its clear failure to comply with the appellate court rules, we decline to do so in light of the importance of the right at stake and the critical stage of these proceedings.

Termination of Reunification Services

Father appears to challenge the June 11, 2009 termination of his reunification services. He states in his petition for extraordinary relief that "family reunification services for the father were prematurely terminated and if those services were continued there is a substantial probability that the children would have been returned to the father." However, his challenge to the June 11, 2009 order is untimely.

When the juvenile court terminated Father's reunification services on June 11, 2009, it did not set a section 366.26 hearing. Therefore, the provisions of California Rules of Court, rule 8.450 et seq., that require the filing of a California Rules of Court, rule 8.452 petition was not applicable at that time. Father was therefore required to challenge termination of reunification services by filing a timely notice of appeal. (§ 395; *In re Eli F.* (1989) 212 Cal.App.3d 228, 233.)

Even if Father's appellate challenge to the order terminating his reunification services is considered on its merits, there is nothing in the record that indicates the juvenile court abused its discretion in terminating those services. The standard of review in this matter is abuse of discretion. (*In re Jasmon O.* (1994) 8 Cal.4th 398, 415.)

The children were removed from Father's custody on May 22, 2008, the matter was adjudicated on September 25, 2008, Father had no contact with the children for nine months and had not complied with his court ordered plan, and Father's reunification services were not terminated until June 11, 2009, over a year from the date of detention, and nine months from the completion of the adjudication hearing. Termination of Father's reunification services was not premature. There was a sufficient rational basis to justify termination of reunification services to Father, who did not avail himself of services and did not visit the children during the nine-month reunification period.

Section 361.5 governs the provision of reunification services. Subdivision (a) of section 361.5 provides that "whenever a child is removed from a parent's or guardian's

custody, the juvenile court shall order the social worker to provide child welfare services to the child and the child's mother and statutorily presumed father or guardians." The statute further provides that for a child under the age of three years, court ordered services shall not exceed a period of six months from the disposition date. (§ 361.5, subd. (a)(1)(B).) Furthermore, "[f]or the purpose of placing and maintaining a sibling group together in a permanent home should reunification efforts fail, for a child in a sibling group whose members were removed from parental custody at the same time, and in which one member of the sibling group was under three years of age on the date of initial removal from the physical custody of his or her parent or guardian, court-ordered services for some or all of the sibling group may be limited as set forth in subparagraph (B). . . . [A] 'sibling group' shall mean two or more children who are related to each other as full or half siblings." (§ 361.5, subd. (a)(1)(C).)

In this case, the four children constituted a sibling group. When the petition was initially filed, the children were ages one, two, four and six. As of the time Father's reunification services were terminated, the children were placed together. Therefore, Father was only entitled to six months of reunification services, and he had nine months.

"[T]he Third District Court of Appeal concluded that, depending on the circumstances presented, the court has the discretion to terminate previously ordered reunification services to a noncompliant parent prior to the six-month review date and held that a parent is not *entitled* to a prescribed minimum period of services. (*In re Aryanna C.* [(2005)] 132 Cal.App.4th at pp. 1242-1243)" (*In re Alanna A.* (2005) 135 Cal.App.4th 555, 564, fn. 7.)

Here, during the period of reunification, Father had no contact with his children, DCFS, or the juvenile court. Evidence suggests that Father lost interest in not only dependency proceedings, but in his children as well. Father failed to provide any evidence that he complied with the court ordered case plan or made any substantive progress to resolve the serious problems that caused the initial removal of his children. We can conclude that Father made no effort whatsoever to reunify with his children.

Thus, the juvenile court did not abuse its discretion when it terminated Father's reunification services.

DISPOSITION

The petition for an extraordinary writ is denied.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

MALLANO, P. J.

ROTHSCHILD, J.